



MULTISTATE TAX COMMISSION

Uniformity Committee Annual Report Fiscal Year 2012

The Multistate Tax Commission develops model laws – statutes and regulations - that states may consider adopting. Proposed model laws may be suggested by our Executive Committee, any of our standing committees, a single state, a taxpayer, taxpayer groups, or any other members of the public.

Once members have identified a model that they would like to develop, the initial drafting process takes place in our Uniformity Committee. All Committee meetings and teleconferences are open to the public and public participation is encouraged. The Commission’s Uniformity Committee is chaired by Wood Miller, Missouri Department of Revenue. Its structure includes two standing Subcommittees: the Sales & Use Tax Uniformity Subcommittee, chaired by Richard Cram, Kansas Department of Revenue; and the Income & Franchise Tax Uniformity Subcommittee, chaired by Robynn Wilson, Alaska Department of Revenue. The Subcommittees have appointed work groups and drafting groups, as needed. Lennie Collins, North Carolina Department of Revenue, chairs the work group for the financial institutions apportionment project. The Uniformity Committee meets three times during the year in person and six or more times during the year by teleconference. Drafting groups associated with various uniformity projects meet regularly by teleconference, some as frequently as weekly.

Currently before the Commission:

1. Model Statutes for the Collection and Remittance of Lodging Taxes by Accommodations Intermediaries
2. Model Statutes for Communications Transaction Tax Centralized Administration

Currently before the Executive Committee:

1. UDITPA related amendments for corporate income tax apportionment
 - Sales factor sourcing for services and intangibles
 - Definition of “sales”
 - Factor Weighting
 - Definition of Business Income
 - Section 18 Distortion Relief
2. Sales and Use Tax Notice and Reporting

Under development at the Uniformity Committee:

Income & Franchise Tax

1. Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax
2. Financial Institutions Apportionment, Amendment

Sales & Use Tax

1. Model Associate Nexus Statute (New York – style “Amazon law”)
2. Protection of Communications Providers from Class Action Lawsuits
3. Communications Definition and Sourcing

Project Summaries

Currently Before the Commission

1. ***Model Laws on Communications Transaction Tax Centralized Administration.*** This project was requested by the telecommunications industry and has three goals. First, develop “best practices” models for centralize administration of local telecommunications transaction taxes under three alternative state structures: **state** taxes distributed to locals – Proposal I, local taxes administered by state – Proposal II, or local taxes administered by centralized local authority – Proposal III. Second, adopt model telecommunications definitions and sourcing rules along the lines of those currently contained in SSUTA. And third, adopt model administrative procedures that would provide protections from class-action lawsuits as contained in SSUTA. The Subcommittee’s Drafting Group, which includes representatives from both government and industry, prepared draft statutes for Proposals I, II and III. These were approved by the Uniformity Committee in November, 2011 and in February, 2012 were approved by the Executive Committee for public hearing. Local government representatives had been invited to participate in this project, and because proposed federal Streamlined legislation would require simplification of state and local telecommunications transactions tax administration, staff for the Streamlined Sales Tax Governing Board had been invited to participate as well. The Executive Committee accepted the Hearing Officer’s report and recommended the proposed models to the Commission and a Bylaw 7 survey. The proposed models passed the Bylaw 7 survey and are now before the Commission for potential adoption.

2. ***Model Statutes for the Collection and Remittance of Lodging Taxes by Accommodations Intermediaries.*** This model is intended for use in states that take the position lodging tax must be collected on the price intermediary charges its customer, which includes the intermediary’s mark-up, rather than merely on the “wholesale” or “discount” price the intermediary pays to the hotel. The model does not impose lodging tax, but addresses collection and remittance requirements: the intermediary is required to collect tax on full amount received from its customer, remit tax on mark-up directly to the state/ locality, and remit tax on “discount” price to the hotel (hotel would then remit to state/ locality). After a public hearing held July 21, 2009, the Hearing Officer provided a report and recommendations to the Executive Committee at its December, 2009 meeting. At the Executive Committee’s January 2010 teleconference, the model was referred to a bylaw 7 survey. Eight Compact member States responded affirmatively and six responded in the negative or explicitly abstained. The Executive Committee then requested the Uniformity Committee provide further recommendations. The Uniformity Committee surveyed states for additional input and ultimately added an alternative proposal to the recommended models. The Executive Committee approved both for a second public hearing. The hearing has been held and the Hearing Officer’s report submitted. The Executive Committee accepted the Hearing Officer’s report and recommended the proposed models, with further amendments, to the Commission. A Bylaw 7 survey was conducted and a majority of affected compact member states indicated they would consider the proposals if approved. The models are now before the Commission for potential adoption.

Currently Before the Executive Committee

1. ***Compact Art.IV [UDITPA] amendments.*** Article IV of the Multistate Tax Compact contains UDITPA virtually word for word. In July 2009, the Executive Committee directed the Uniformity Committee to begin drafting model amendments for five of its provisions: **section 17 sales factor numerator sourcing, definition “sales,” definition “business income,” factor weighting, clarification of section 18,** and instructed the Uniformity Committee to report back if it recommends the scope of review be changed. In December 2009, Richard Pomp, Prentiss Willson, and Michael McIntyre provided an educational foundation on UDITPA background and apportionment concepts. The Uniformity Subcommittee, working with a drafting group, has recommended amendments for each of these five

provisions. The Executive Committee began its consideration of whether to approve the models for public hearing in December, 2011, and asked for Uniformity Committee clarifications. Those clarifications were made and the Executive Committee took the matter up again in May, 2012. After discussion, the matter was held over for further consideration by the Executive Committee.

2. Sales and Use Tax Notice and Reporting. At its March, 2010 meetings, the Subcommittee initiated two projects related to sales and use tax education and enforcement: (1) a sales and use tax notice and reporting model, and (2) an associate nexus model (the associate nexus model is discussed below). The Subcommittee determined it would work first on the sales and use tax notice and reporting model. The resulting proposal requires sellers who are not collecting sales or use tax to notify purchasers of a potential tax liability at the time of sale if the product is to be delivered into the state. Sellers are also required to make annual reports to each such purchaser and an annual report to the state. De minimis exceptions and penalties are provided. The draft was approved by the Uniformity Committee in early March, 2011. Later that month, the Executive Committee approved the draft for public hearing. The hearing was held, and the hearing officer's report and recommendations were presented to the Executive Committee, which recommended approval of the proposal to the Commission. The proposal was not placed on the Commission's agenda, however, because it had not passed the bylaw 7 survey at that point. The proposal came back before the Executive Committee in December, 2011, and clarifications were requested. The Uniformity Committee made those clarifications and the Executive Committee took the matter up again in May, 2012. During that meeting, the Executive Committee voted to retain the proposal pending further discussion after the 10th Circuit has issued its opinion in *Direct Marketing Association v. Brohl*, D.C. No. 10-cv-01546-REB-CBS (10th Circuit).

Under Development at the Uniformity Committee

Income & Franchise Tax

1. Partnership or Pass-Through Entity Income Ultimately Realized by an Entity That Is Not Subject to Income Tax. This project addresses tax gap issues that arise when a pass-through entity is owned by another entity that is not subject to corporate income tax. The Subcommittee appointed a drafting group to list issues and options. After considering several alternative approaches and receiving significant input from the insurance industry, the Subcommittee chose its preferred approach and directed that a draft be developed. After several meetings and teleconferences, the Subcommittee voted to approve a draft in at its in-person meeting in December 2010. In March 2011, the Executive Committee approved the proposal for public hearing. The hearing was held and a hearing officer's report and recommendations were provided to the Executive Committee, which discussed the matter in June and continued the discussion to its meeting in July. At the July meeting, the Executive Committee requested the Uniformity Committee work with industry on its alternative recommendations or amendments to the current recommendation and report back to the Executive Committee with a matrix of issues and options.

2. Financial Institutions Apportionment, Amendment. The Subcommittee's work group, which includes representatives from several states and the banking industry, identified problems with the current MTC financial institutions model and proposed conceptual amendments for addressing them. The amendments included clarifications to the property factor rule for sourcing loans (based on SINAA – solicitation, investigation, negotiation, approval and administration); new receipts factor rules for sourcing ATM fees, merchant discounts, and trust account fees; and revisions to the receipts factor rule that requires use of "cost of performance" for sourcing any receipts not otherwise specified. The Subcommittee agreed with the work group's conceptual recommendations, and directed the work group to draft amendments accordingly. The work group completed a draft of recommended changes

to the receipts factor, which the Subcommittee has reviewed, amended, and preliminarily approved. The work group has now begun drafting amendments to the property factor – in particular, the sourcing of loans using the “SINAA” approach. When the property factor provision is complete, the Subcommittee will consider the proposal as a whole.

Sales & Use Tax Uniformity Subcommittee

1. Associate Nexus Presumption. A first draft of this proposal was presented during the Uniformity Committee teleconference in October, 2011. That draft largely followed legislation first adopted in New York. A second draft has been prepared for the July 2012 meeting that also largely follows the New York legislation and includes aspects of the similar legislation adopted by California. The Subcommittee has benefited considerably from comments and input by representatives from New York and California.

2. Protection of Communications Providers from Class Action Lawsuits. This project was requested by the telecommunications industry. It was set aside so that work could be completed on models for Centralized Administration of Telecommunications Transaction Taxes (above). We are now ready to begin work on the project and the industry plans to provide a presentation to the Subcommittee in July.

3. Communications Definition and Sourcing. This project was requested by the telecommunications industry. It was set aside so that work could be completed on models for Centralized Administration of Telecommunications Transaction Taxes (above). We are now ready to begin work on the project and the industry plans to provide a presentation to the Subcommittee in July.